IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.11.2007

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

WRIT APPEAL NO.1158 OF 2002
In
WRIT PETITION NO.11080 OF 1994

The Management of Marudhupandiyar
Transport corporation, Marudhapathi
Karaikudi-623307, rep.by its
Managing Director, [now known as
Tamil Nadu State Transport Corporation
[Kumbakonam Division III] Limited. .. Appellant/Petitioner

Vs

1.The Presiding Officer,
Labour Court, Madurai.

2.U.Sivamani .. Respondents/Respondents

[Cause title accepted as per
Order of the Court dated
17.04.2002 in WAMP.No.1853/02]

Appeal filed under Clause 15 of the Letter Patent against the order passed in W.P.No.11080 of 1994 dated 22.01.2002 Writ of Certiorari call for the records from he file of the Ist respondent in I.A.No. 217/1990 and quash the order passed therein dated 27/7/1993.

For Appellant : Mr.S.Jayaraman

For Respondents: Mr.P.Gurusamy

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JUDGMENT

M.VENUGOPAL, J.

The appellant in the writ appeal, viz., Tamil Nadu State Transport Corporation [Kumbakonam Division III] Limited, is the petitioner in the writ petition No.11080 of 1994. The appellant/State Transport Corporation has filed the writ petition as against the award passed by the first respondent, the Presiding Officer, Labour Court, Madurai, dated 27.07.1993 in I.D.No.217 of 1990.

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2.The second respondent/employee was in the services of the appellant Corporation as Conductor in Aruppukottai Branch and when he was on duty in the bus bearing Registration No.TML-2307, the route being between Aruppukottai and Paraitchi on 21.04.1988 at 5.50 p.m., the Checking Inspector while checking the bus, found that one of the commuters out of 36 was in possession of a ticket numbering ML-16/18649 to the value of Rs.1.10/- which had no nexus to the concerned trip. On enquiry, the commuter answered that the ticket was given by the second respondent/conductor. The appellant/writ petitioner/respondent framed charges against the conductor and after the completion of enquiry, considering the seriousness of the misconduct, dismissed him from service. The second respondent/conductor filed I.D.No.217 of 1990 before the Presiding Officer, Labour Court, Madurai, the first respondent herein and the Labout Court, ultimately, came to the conclusion that the enquiry was held by the appellant/State Transport Corporation in a proper fashion and the charges were proved. The first respondent/Labour Court held in its award that the second respondent/conductor was guilty of the charges and in regard to the misappropriation of meager amount of Rs.1.10/- had gave a finding that the punishment of dismissal was excessive and resultantly, the first respondent/Labour Court set aside the dismissal order passed by the appellant/State Transport Corporation while exercising its power under section 11-A of the Industrial Disputes Act and ordered reinstatement of the second respondent/conductor with continuity of service and 50% of backwages.

3.The State Transport Corporation has filed the writ petition in WP.No.11080/1994 as against the award dated 27.07.1993 passed by the Labour Court. The Learned Single Judge by his order dated 22.01.2002 in the writ petition has observed that the award passed by the first respondent/Labour Court was untenable and set aside the same, but considering the facts and circumstances of the case that the age of the second respondent/conductor was about 33 years and the fact that he was paid with wages under section 17-B of the Industrial Disputes Act and since he was not working anywhere till today and the fact that there was no previous complaint against him, directed that the second respondent/conductor should be employed afresh; but he should not be given the work of a conductor instead he may be provided with the employment in the same cadre not involving financial dealings and with this modification allowed the writ petition in part.

4.Aggreived against the order passed by the learned Single Judge in W.P.No.11080/1994 dated 22.01.2002, the State Transport Corporation has preferred this writ appeal.

5.The learned counsel for the appellant/State Transport Corporation contends that the learned Single Judge while passing orders in W.P.No.11080 of 1994 dated 22.01.2002 after coming to the conclusion that the award passed by the Labour Court was untenable and that after having upheld the punishment and set aside the order ought not to have given a direction that the second respondent/conductor should be employed afresh and that he should be given the work of a conductor but

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may be provided with the employment in the same cadre no involving financial dealings and that the direction so issued is beyond the jurisdiction vested under Article 226 of the Constitution, when the dismissal was upheld. It is the specific contention of the appellant/State Transport Corporation that the learned Single Judge, after having rendered a clear finding that the second respondent/conductor committed misappropriation, ought not to have directed re-employment of him in the same cadre not involving financial dealings. According to the learned counsel for the appellant/State Transport Corporation that the misconduct committed by the second respondent/conductor was a serious one, more so, when the employee was having fiduciary relationship with the employer and therefore, no leniency should be shown to him.

6.Learned counsel for the appellant/State Transport Corporation pressed into service another contention that there was no post equal to that of conductor in the Corporation and that the number of posts and postings are governed by Rules and Regulations, the direction given by the learned Single Judge that the employee should not be given the work of conductor, but may be provided with employment in the same cadre not involving financial dealings was wholly unsustainable in the eye of law. It is further represented that the second respondent/conductor was warned on several occasions for various misconduct and also identical misconducts and was suspended for the same by way of punishment for 20 days.

7.In SHROUD'S Judicial Dictionary, the term 'misconduct' means arising from ill-motive; acts of negligence, errors of innocent mistake do not constitute such misconduct. The omission to do what is expected of a person to do constitutes misconduct. Whereas, if such failure is directed to intentionally, cause mischief or loss to any person; then it is called 'willful misconduct'. Therefore, misconduct is a definite word with a specific connotation. It cannot be gainsaid that when a person has entered into a position of a servant and if he does something incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him as per decision in PEARCE VS. FOSTER reported in 1886 [17] QB 536. The term misconduct is a generic term. As a matter of fact the synonyms of misconduct are:

1. Misbehaviour
2. Misdemeanour
3. Mismanagement
4. Misdeed
5. Delinquency and
6. Offence

8.It is not out of place to make a pertinent mention that the concept of misconduct in employer and employee relationship is based upon the nature and relationship itself and implied and express conditions of services.

9.Further more, the quantum of amount as misappropriated by the concerned employee is irrelevant when there is fiduciary relationship

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between the employer and employee, in our considered opinion and he cannot

escape liability. The employee would be trust worthy and that his acts would justify the confidence of employer and that he will not act so as to prejudice or damage any interest of his master, that he will not act or conduct himself in a way which is inconsistent or incompatible with the faithful discharge of his duties to the employer. As a matter of fact, no precise scale of gradation to arithmetically compare the gravity of one from the other can be laid down by this court. In the presence case on hand, the second respondent/conductor has not remained clean.

10.At this juncture, it is apt to point out that acts of dishonesty/fraud certainly constitute misconduct of serious nature which not only attract dismissal but much else as there legal consequences as per the decision in 1963 [1] LLJ Page 250 between WORKMEN OF DEMA DIM TEA ESTATE VS. DEMA DIM TEA ESTATE. Misconduct is doing something or omitting to do something which is wrong to do or omit. Whereas the person who is guilty of the act or omission knows that the act which he is doing, or that which he is omitting to do, is a wrong thing to do or omit it, therefore, follows that the misconduct may or may not be willful. [LEWIS VS. G.W.RAILWAY CO.- 1877 [3] QBD 195].

11.Misconduct arises if a person does what he should not have done and does not do what he should have done or any unbusiness like conduct, including negligence or want of necessary care. [P.N.RAILWAY COMPANY VS. MOOLIGI SINAI COMPANY-AIR 1930 CALCUTTA 815].

12.In 1999 [2] LLJ Page 194 between MANAGEMENT OF CATHOLIC SYRIAN BANK LIMITED VS. INDUSTRIAL TRIBUNAL, MADRAS-104 AND ANOTHER, it is inter-alia observed that 'the Industrial Tribunal cannot interfere with quantum of punishment if proved misconduct is grave in nature warranting dismissal from service. In the present case on hand, the first respondent/Labour Court and the learned Single Judge have come to the clear conclusion, in the award dated 27.07.1993 and in the order dated 22.01.2002 that the conductor was guilty of misappropriation of Rs.1.10/-. Further more, the learned Single Judge after having found that the second respondent/conductor committed a misconduct of misappropriation ought not to have given further direction for his re-employment, not to be given the work of conductor but to be provided with the employment in the same cadre not involving financial dealings and this direction issued by the learned Single Judge in WP.No.11080/1994 is unsustainable and the same is without jurisdiction, in our considered opinion. Even a single

incident of misconduct, lack of fidelity, honesty would entail dismissal.

13.It is to be remembered in the case on hand before us, the second respondent/conductor has issued a ticket bearing No.ML-16/18649 to a passenger to the value of Rs.1.10/- meant not for the particular

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route/trip and he was caught red handed when the Checking Inspector checked the bus No.TML-3207 plying in between Aruppukkottai and Paraitchi on 21.04.1988 at about 5.50 p.m. Moreover, when the first respondent/Labour court, came to the conclusion that the domestic enquiry conducted by the appellant/State Transport Corporation was proper and charges were proved against the employee/conductor, then it ought not to have directed reinstatement of the second respondent/conductor with continuity in service and 50% backwages and such a direction issued in exercise of the powers conferred under section 11-A of the Industrial Disputes Act is not valid in law.

14.At this juncture, it is pertinent to point out that a conductor who deprives his Master of the Master's legitimate earnings must be held to be guilty of misconduct. In 2006 [1] MLJ 987 between KARNATAKA BANK LIMITED VS A.L.MOHAN RAO, at page 988, the Hon'ble Supreme Court has observed that "it is not for the Court's to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as an inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case, of such a misconduct, it could never have been said that such termination of service is not the appropriate punishment."

15.From the foregoing discussions and having regard to the facts and circumstances of the present case and consideration of available material papers on record, we come to the inevitable conclusion that the award passed by the first respondent/Labour Court, Madurai in ID.No.217 of 1990 dated 27.07.1993 and the order passed by the learned Single Judge in WP.No.11080/1994 dated 22.01.2002 are liable to be set aside and accordingly, the same are set aside in furtherance of substantial cause of justice.

16.Learned counsel for the respondents/Workman brought to our notice that 17-B wages were paid for some time by the appellant/State Transport Corporation and thereafter, the same was not paid.

17.Learned counsel for the appellant/State Transport Corporation submitted that 17-B wages was paid for sometime to the second respondent/conductor and later, after obtaining interim stay in WAMP.No.2163 of 2002 in WA.No.1158 of 2002 which was made absolute on 03.06.2002, the same was not paid to the second respondent/conductor. The settled legal principle is that the workman will continue to get wages if stay on award of reinstatement is granted by the court and further that the payment of wages to a workman pending proceedings in higher court as enshrined under 17-B of the Industrial Disputes Act is in the nature of subsistence allowance and the same will not be adjustable and not recoverable in our considered opinion.

18.In that view of the matter, the appellant/State Transport Corporation is directed to pay the balance 17-B wages to the second respondent/conductor from the date of non-payment till date by means of

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depositing before the first respondent/Labour court to the credit of ID.No.217 of 1990, if not already deposited and the same is directed to be deposited by the appellant/State Transport Corporation within a period of one month from the date of receipt of a copy of this order. On such deposit, the second respondent/conductor is entitled to receive the amount by filing appropriate application before the first respondent/Labour court.

19.With the above direction, the writ appeal is allowed. No costs.

Ap

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Presiding Officer,
Labour Court, Madurai.

+ One cc to Mr. D. saravanan, Advocate SR 70355
+ One cc to Mr. S. Jayaraman, Advocate SR 70236

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